

REMARKS

The enclosed is responsive to the Examiner's Office Action mailed on December 8, 2009. By way of the present response, applicant has: 1) amended claim 1; 2) added no claims; and 3) canceled no claims. Support for the amendment to claim 1 is found in the specification as originally filed – e.g., at least in the last paragraph on page 5 and in original claims 9 and 10. No new matter has been added. Reconsideration of this application as amended is respectfully requested.

The Examiner noted on page 3 of the present Office Action that claims 1 and 4-7 are drawn to a method but not tied to a particular structure/machine. Applicant has amended claim 1 to recite that features of the method are performed by a microprocessor.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 4, 5, and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,349,255 by Heckmann ("Heckmann") in view of WO Patent Publication No. 02/053430 by Hessmert ("Hessmert").

Applicant respectfully submits that Heckmann does not teach or suggest a combination with Hessmert and that Hessmert does not teach or suggest a combination with Heckmann. Applicant respectfully submits that the combination is the result of impermissible hindsight based solely upon the present application. Heckmann describes a longitudinal acceleration sensor that has a disadvantage of ground acceleration inaccuracies due to inclines in the road surface. To overcome this disadvantage, Heckmann describes passing the acceleration sensor output

through a high-pass filter, an acceleration calculated by wheel rotation speed through a low-pass filter, and adding the two filtered signals. The Examiner has conceded that Heckmann fails to disclose obtaining a second filtered acceleration signal by calculating a net driving force acting on the vehicle, calculating an estimated vehicle acceleration from the net driving force, and high pass filtering the estimated vehicle acceleration. The Examiner alleges that Hessmert describes the estimated vehicle acceleration from a net driving force and that it would be obvious to combine or perform a simple substitution of elements in Heckmann and Hessmert. In other words, the Examiner has proposed replacing Heckmann's acceleration sensor (the input for the high-pass filter) with Hessmert's estimated acceleration. Replacing Heckmann's acceleration sensor, however, eliminates the entire purpose of the method and apparatus described by Heckmann – compensating for the inaccuracy of the acceleration sensor on a slope. Given that the proposed modification would render Heckmann unsatisfactory for its intended purpose, applicant respectfully submits that the Examiner has failed to articulate a rational underpinning for the combination. (MPEP §2143.01 V).

Accordingly, applicant respectfully submits that the rejection of claims 1, 4, 5, and 8 has been overcome.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Heckmann and Hessmert as applied to claims 1 and 5 and further in view of U.S. Patent Publication No. 2004/0166824 by Franca-Neto ("Franca-Neto"). Applicant does not admit that Franca-Neto is prior art and reserves the right to swear behind Franca-Neto at a later date.

Given that claims 6 and 7 are dependent upon claim 1, and include additional features, and that Franca-Neto fails to remedy the shortcomings of Heckmann and Hessmert set forth above, applicant respectfully submits that the rejection of claims 6 and 7 has been overcome for at least the reasons set forth above.

CONCLUSION

Applicant respectfully submits that in view of the amendments and arguments set forth herein, the applicable objections and rejections have been overcome. Applicant reserves all rights under the doctrine of equivalents.

Pursuant to 37 C.F.R. 1.136(a)(3), applicant hereby requests and authorizes the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 02-2666.

Respectfully submitted,

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